Filed 7/31/02 Marriage of C. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

| | |
|---|---|
| In re the Marriage of IDELLE and OVANDO C. | B146948<br><br>(Los Angeles County Super. Ct. No. BD108528) |
| IDELLE C.,<br><br>Appellant,<br><br>v.<br><br>OVANDO C.,<br><br>Respondent. | |

APPEAL from orders and a judgment of the Superior Court of Los Angeles County, Aviva K. Bobb and Arnold H. Gold, Judges. Affirmed.

Idelle C., in pro. per., for Appellant.

Sterling E. Norris for Judicial Watch, Inc., as Amicus Curiae on behalf of Appellant.

Robin Yeamans for California National Organization for Women as Amicus Curiae on behalf of Appellant.

Ovando C., in pro. per., for Respondent.

Dianna J. Gould-Saltman for the Minor.

Idelle C. appeals from a judgment and orders pursuant to which custody of her and Ovando C.'s daughter, Heather, was awarded to Ovando and sanctions were imposed against Idelle.[1] Idelle and amici curiae Judicial Watch, Inc. and California National Organization for Women (CA NOW) contend that the orders are defective in multiple respects. We affirm.

## INTRODUCTION

In the course of a protracted custody battle, the trial court decided, pendente lite, that the best interest of Heather required that she be removed from the custody of Idelle and placed with Ovando. Following a lengthy trial, a different judge reached the same conclusion and incorporated it into the judgment now under review. That judge also ordered that Idelle pay a portion of Ovando's attorney fees as sanctions under Family Code section 271, finding that Idelle had frustrated the policy of the law to promote settlement and encourage cooperation.

The record that Idelle has presented to this court, in the form of an appellant's appendix and originals of daily transcripts of various court sessions that she has lodged, is under inclusive in some respects and over inclusive in others. It has no logical order. Many documents, which could conceivably have been exhibits at trial, are included in the appendix without any effort at authentication. Additional documents, such as an e-mail to "Moms Against Abuse" that discusses an article from a Kansas newspaper, constitute an attempt by Idelle to create new evidence on appeal. Some of the reporter's transcripts that are included in the appendix appear complete while others are select pages from a given session that Idelle wishes to highlight. The lodged transcripts, although numerous, are quite incomplete.

---

[1] As suggested in *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475–476, footnote 1, we refer to the parties by their first names.

Ovando has moved this court to dismiss the appeal based on, among other things, Idelle's failure to present a proper appendix under California Rules of Court, rule 5.1. It has also been noted that Idelle's appellate briefs often contain incorrect citations to this incomplete and disorganized record. Nonetheless, we find that a sufficient record has been presented to permit us to evaluate the arguments advanced by Idelle and amici on their merits. In the hope of achieving a final resolution of the issues raised, we believe this is the best course of action to take here. Accordingly, Ovando's motion to dismiss based on the inadequacy of the appellate record is denied.[2]

## FACTUAL AND PROCEDURAL BACKGROUND

### A.

Idelle and Ovando were married in March 1985. Their daughter, Heather, was born in October 1986. Heather was later diagnosed as having developmental delays and attention deficit disorder.

In March 1993, Idelle filed a petition for dissolution of marriage. The battle over Heather's custody began almost immediately and was soon centered around accusations by Idelle and later by Heather that Ovando had sexually molested Heather. In June 1993,

---

[2] We also deny Ovando's motions to dismiss or stay on grounds that Idelle has failed to make court-ordered payments for child support and under Family Code section 271, and for monetary sanctions against Idelle, amici, and an attorney who may have assisted Idelle in the preparation of her appeal.

At Idelle's request, we take judicial notice of our own records in the various petitions for extraordinary relief that she has brought over the years. We have no ability to grant Idelle's request for judicial notice of what she characterizes as the "unaltered, correct dockets and case files" of the trial court in this matter, but do take notice of all trial court records which Idelle has specifically identified and brought to our attention. Finally, we deny Idelle's motion for reconsideration of her request to change appellate venue, her motion to quash the brief submitted by Heather's counsel, her motion for judicial notice of the 30-year-old superior court records of the personal divorce of one of the trial judges in this case, and her motion to compel the members of this court to disclose whether they attended or contributed to the recent retirement dinner of that trial judge.

the initial order to show cause (OSC) was heard and psychiatric evaluation by Dr. Lionel Margolin was ordered pursuant to Evidence Code section 730. At the hearing on the OSC, Idelle was awarded primary temporary custody of Heather, with visitation by Ovando.

In January 1994, following issuance of Dr. Margolin's evaluation, the trial court (Hon. Irving Feffer) awarded joint legal and physical custody of Heather to Idelle and Ovando. Later in 1994, the trial court appointed Attorney Dianna Gould-Saltman to represent Heather.

In December 1994, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging that Heather was a dependent child because she was the victim of a protracted custody battle (count 1), had been sexually abused by Ovando, including oral copulation, digital penetration and fondling of Heather's vagina and buttocks (count 2), Idelle and Ovando possessed limited abilities to contend with Heather's physical and mental disabilities (count 3), Idelle's emotional problems rendered her incapable of providing for Heather's emotional needs (count 4), and Heather was exposed to violent confrontations between Idelle and Ovando (count 5). (*In re Heather C.* (Super. Ct. L.A. County, 1994, No. CK14663).)

In January 1995, the dissolution and dependency actions were consolidated by order of the supervising judge of the dependency court. Further proceedings in the dependency matter were ordered to be conducted in a family law department of the Los Angeles Superior Court. During the pendency of these proceedings, Heather was placed in a group residential facility, with monitored visits by each parent.

In April 1995, following a lengthy hearing, the trial court (Hon. Irving Feffer) found count 1 (victim of protracted custody battle) to be true and the remaining counts were dismissed. In dismissing count 2 (sexual abuse by Ovando), the court stated, in part: "[S]uffice to say that the court listened to the evidence and it is not very convincing at all. It does not rise to the dignity of going forward with this case, and I will dismiss it . . . ."

In September 1995, after a contested disposition hearing, Heather was placed with her parents, custody to be shared equally. The dispositional order provided, among other things, that Heather was to remain in individual counseling with Dr. Lyn Greenberg, "not as a victim of molestation but as a victim of her parents' ongoing dispute."[3]

DCFS thereafter filed a second petition against Ovando pursuant to Welfare and Institutions Code section 342 (subsequent petition alleging new facts). Attorney Megan Turkat was appointed to represent Heather. On December 15, 1995, Turkat filed a petition pursuant to Welfare and Institutions Code section 388 (petition for modification filed by interested parties), seeking to place Heather with a relative or in a neutral setting pending disposition, with Idelle's visitation to be monitored. The petition alleged that Idelle had disregarded a court order to refrain from discussing the case in front of Heather. Turkat asserted that Idelle was attempting to undermine Heather's ability to separate her own wishes from those of Idelle.

On July 1, 1996, the date on which the section 342 and 388 petitions were set for trial, the petitions were dismissed upon settlement by the parties and approval by the trial court (Hon. John Sandoz). Under the terms of the settlement, Heather was placed with Idelle, with Ovando initially to have monitored contact with Heather. The settlement contemplated that the visitation was to be progressively liberalized and eventually become unmonitored. Dependency jurisdiction was terminated in September 1996.

In November 1996, the trial court (Hon. Paul Gutman) set an OSC on the issue of evidentiary sanctions against Idelle for failing to provide an exhibit list at the mandatory settlement conference and to submit a list of witnesses whom she intended to call for the impending trial. At the December 6, 1996 hearing on the OSC, Judge Gutman denied

---

[3] Idelle appealed the disposition order, contending that the trial court had improperly dismissed count 2. She asserted that a preponderance of the evidence demonstrated that Heather had been sexually abused by Ovando. In an opinion of this court, we rejected Idelle's contention. (*In re Heather C.* (Oct. 30, 1996, B099616) [nonpub. opn.].)

Idelle's request for a continuance and determined that custody and visitation issues should be bifurcated and heard before the other issues in the case. The court found that Idelle had failed to show cause why sanctions should not be imposed and ruled that the nature of any sanctions should be determined by Judge Sandoz.

At a hearing conducted on December 10, 1996, Judge Sandoz issued, as sanctions, an order stating that Idelle "may not have any other witnesses present in the child custody and visitation trial except [herself], [Ovando] and the minor child" and that she "may not present any evidentiary documents or exhibits in the child custody and visitation trial." Trial was ordered to commence on January 2, 1997.

Trial proceedings took place on January 2 and 3, 1997, before Judge Sandoz. At that time, Heather's former therapist, Dr. Greenberg, testified on the limited issue of whether it would be detrimental to Heather to testify. The court ruled that Heather could testify and spoke with her in chambers. Idelle also called Ovando as a witness under Evidence Code section 776. The matter was then continued to February 11.

At the February 11, 1997 hearing, the parties stipulated to the appointment of psychiatric evaluator Dr. Jaye-Jo Portanova. They further stipulated that Dr. Portanova's report would be "'received in evidence without foundation or objection.'" Additional trial dates were set for August, September, and October 1997. In August 1997, the trial dates were vacated and the matter was placed on a "'Waiting List.'" On September 3, 1997, the matter was placed off calendar on the court's own motion.

Judge Sandoz later took a medical leave and was replaced in his courtroom by Judge Carol Koppel. A March 1998 letter from Idelle's counsel stated, among other things, that Idelle would be willing to wait for Judge Sandoz's return and did not want Dr. Portanova "'rushing' to complete" her report. Rather, it was more important that the report "be complete than that it be immediate."

**B.**

On June 1, 1998, Judge Koppel notified the parties by fax that Dr. Portanova had completed her evaluation and had submitted all copies of the evaluation directly to the

court rather than distributing them to the parties. The parties were ordered to be present in court on June 2 for proceedings related to the evaluation.

At the June 2 hearing, the court explained that it had received a telephone call from Dr. Portanova requesting that the court have the parties present when the evaluation was distributed. The parties were told to read the evaluation in the courtroom and be prepared to discuss it. Idelle objected to the procedure. Following argument, the court found that Heather "may be endangered by remaining with [Idelle], that there is the danger of a flight risk."[4] Ovando was awarded sole custody of Heather pendente lite, contingent on, among other things, his immediately commencing conjoint therapy with her. The court further ordered that Idelle have no contact with Heather pending the next court hearing, which was scheduled for July 6, 1998. The bailiff was told to escort Idelle out of the courtroom to her vehicle.

Idelle moved to disqualify Judge Koppel for bias pursuant to Code of Civil Procedure section 170.1. At the July 6 hearing, the court indicated that the motion would be stricken pursuant to Code of Civil Procedure section 170.4, subdivision (b) (challenge may be stricken if it is untimely or discloses no legal grounds for disqualification). Idelle then argued that the court's prior ex parte communication with Dr. Portanova was improper. The court responded that it was appropriate because Dr. Portanova indicated that Idelle "was asking around about how to get passports." The court also ordered that

---

[4] In her report, Dr. Portanova recounted an interview with the principal of Heather's school in which the principal related that Idelle had accused Ovando of sexually molesting Heather. "One parent called [the principal] after Idelle stood in front of a car, blocking passage and stating, 'I need your help.' Idelle asked this parent for a 'passport' to get Heather out of the country because she had been molested by [Ovando]." Dr. Portanova further stated that "Idelle's 'runaway risk' needs to be addressed. This is a serious concern. She is mobile and working out of her home. She claims to have 'no life' outside this case or Heather. Collaterals have reported that Idelle has discussed getting Heather 'out of the country.' . . . The court and counselors should be alerted to this very serious potential."

Idelle not discuss Dr. Portanova's report with the media. At no time during the July 6 hearing did Idelle argue the merits of the pendente lite order of June 2, which was left in effect pending proceedings that were set for a later date.

Judge Sandoz later returned from medical leave. On August 13, 1998, he modified Judge Koppel's order of June 2 and permitted Idelle to have monitored visits with Heather. He also ordered that Idelle be permitted to reopen discovery as to Drs. Portanova and Gibbs.[5] At a September 17 hearing on OSC's filed by both parties, Judge Sandoz ordered, among other things, that because of the lengthy trial estimate, the matter would be "transferred to Judge Gutman in Department 2 for reassignment as he sees fit." On October 19, Judge Gutman ordered the matter "transferred to Department 18, Judge [Arnold] Gold, for trial on the limited issues of child custody and visitation. All financial issues are reserved to this department for further reassignment at a later date."

**C.**

At a hearing on November 24, 1998, before Judge Gold, the court and counsel discussed a pending request by Idelle for relief from the evidentiary sanctions that had been imposed by Judge Sandoz. The court noted that Idelle had failed to mention the denial of a prior motion for relief from sanctions, to which reference had been made in pleadings submitted by Ovando. Counsel for Idelle said that she had recently substituted in and had found the files in complete disarray. She further stated that she was "trying to find out if the case is a mistrial case." Judge Gold stated: "There may have been a mistrial. I don't know whether there's a mistrial or not. I read Judge Gutman's sanction order as applying to the, quote, 'the trial,' unquote, and therefore I intend to enforce it unless it's modified." Ultimately, Idelle's motion for relief from the evidentiary sanctions was denied without prejudice to renewal before Judge Sandoz.

---

[5] Dr. Gibbs administered psychological tests to Idelle, Ovando, and Heather in mid-1997 in conjunction with Dr. Portanova's custody evaluation.

Trial commenced before Judge Gold in December 1998. At one of the first sessions, Heather testified in chambers. Under questioning by counsel for Idelle, Heather testified that Ovando had played games with her in the bedroom that involved touching her in places that were "[n]ot okay to touch," "[l]ike in [her] butt." She further testified that Idelle had never told her to say things that were untrue.

On January 4, 1999, a motion by Idelle to lift evidentiary sanctions was heard before Judge Sandoz. As pertinent to this appeal, Judge Sandoz ruled that Idelle could present testimony from the principal of Heather's school, Dr. Gibbs, "and unless prohibited by some prior order, any testimony from Dr. Ralston."[6] The court further commented that the reason Idelle's request for other witnesses was denied was because the court wanted "testimony from persons who have actually had the involvement with [Heather] . . . . You [Idelle] didn't state any of the other persons you wanted, just a whole litany of persons. Not even a litany of persons, a whole litany of possible people."

At a hearing on January 7, 1999, Judge Gold considered the question of whether the April 1995 ruling in the dependency proceeding rejecting the allegation that Ovando had sexually molested Heather should be given res judicata or collateral estoppel effect in this proceeding.[7] Idelle argued that res judicata did not apply, noting that it was DCFS, rather than she personally, that prosecuted the dependency matter. The court observed that the standard of proof applicable to the allegation of sexual abuse in the dependency matter was preponderance-of-the-evidence[8] and found that there was an identity of

---

[6] Dr. Ralston was Heather's individual therapist during the time Dr. Portanova was conducting her evaluation.

[7] The terms res judicata and collateral estoppel were used interchangeably in the proceedings. For convenience, we shall use res judicata to mean both.

[8] The burden of proof in a dependency matter is "by the preponderance of the evidence with respect to a decision to assert jurisdiction, and by clear and convincing evidence if the child is to be removed from parental custody (see [Welf. & Inst. Code,] §§ 355, 361)." (*In re Cindy L.* (1997) 17 Cal.4th 15, 30.)

interest between DCFS and Idelle with respect to the allegation that Ovando had molested Heather. The court tentatively concluded that it would give res judicata effect to the dependency proceeding, further stating that if Idelle had additional facts to offer on the subject, the court would address them at a hearing pursuant to Evidence Code section 402. Idelle was also given additional time to brief any factual issues that might affect the res judicata issue.

An Evidence Code section 402 hearing on the question of privity for res judicata was held on January 21, 1999. At that hearing, Idelle's counsel in the dependency matter testified that he did not agree with DCFS over the presentation of certain evidence against Ovando on the allegation of sexual abuse. He conceded that he had supplied information to DCFS to support the case against Ovando and that at the dependency trial he had often asked many more questions of witnesses than did the DCFS attorney. Moreover, counsel was unable to answer many of the questions posed at the section 402 hearing based on his lack of recollection of the specifics of the dependency trial.[9]

On February 3, 1999, the parties appeared again before Judge Sandoz on a motion by Idelle to reconsider witness preclusion sanctions. The motion was granted in part, and Idelle was permitted to call Ovando's wife, Kathryn C., and visitation monitor Maxine Baker-Jackson as witnesses at trial. In making this order, Judge Sandoz commented that these witnesses had information relevant to the two years that had transpired since the sanctions order was entered.

The trial of the custody and visitation issues thereafter proceeded before Judge Gold, with numerous witnesses testifying in February through May 1999. At a hearing on April 1, the court considered an ex parte application by Idelle for increased visitation.

---

[9] Although there is no ruling on the res judicata issue in any portion of the record that has been presented on appeal, it appears that the trial court barred Idelle from relitigating her allegations of sexual abuse that were rejected in the April 1995 dependency proceeding.

The court stated that it had considered terminating the requirement that Idelle's visits with Heather be monitored, but decided not to do so mid-trial. An ex parte application filed by Ovando, characterized by Ovando's counsel as seeking "[s]tay-away orders," was also heard. Ovando testified that Idelle spent time alone with Heather during a book fair being held at Heather's school and had told the parents of a friend of Heather's that the friend might not be safe staying with Heather at Ovando's house. The court ordered that Idelle have no contact with Heather other than when a monitor is present.

As stated by Idelle in her corrected opening brief to this court, "In the face of the inability of either Idelle or Heather to be heard on the molestation claims, Idelle, in frustration, began to seek redress from other public entities and to discuss the many issues in this case. For example, a local free paper, New Times Los Angeles, published statements by Idelle in July 1999, and a local television station did a story on this case, among others, although in both Heather's name was changed, and no recognizable picture was included."

In May 1999, Judge Sandoz heard another motion for relief from evidentiary sanctions filed by Idelle. The motion was granted to the extent that the court ordered that Idelle could "introduce any documentary evidence she wishes subject to the trial court's decisions on admissibility under any applicable provision under the Evidence Code."

Numerous other trial sessions were conducted in September and November 1999 and January and March through June 2000.

**D.**

On September 12, 2000, the court issued an 82-page tentative statement of decision (TSOD). The TSOD was separated into three parts. The first, which covered the period from 1993 through 1998, was a "chronological recounting of excerpts from reports rendered to the Court by psychiatrists and other mental health professionals. . . ." It started with the November 1993 report of Dr. Margolin, who had been appointed in the dissolution action pursuant to Evidence Code section 730. In these reports, Dr. Margolin stated, among other things, that Idelle was "'quite manipulative and not forthright,'" "'extremely controlling,'" and made statements in Heather's presence "'clearly for the

purpose of causing her daughter anxiety.'" When a DCFS interviewer investigating Idelle's allegations of sexual abuse was interviewing Heather, "'Heather appeared to be in good sprits and was acting normally. However, the minute Idelle came into the room, Heather [curled up on the floor in a fetal position]. [¶] Idelle immediately said to Heather, "Tell her the things you tell me." Heather did not respond. Idelle became distraught. She began to shake, cry and threaten. "I have to assume that you have lied to me fourteen or fifteen times. I no longer will listen to you. I will not help you when you're scared. I can't stand this." With that, Idelle left the room, leaving Heather with [the interviewer].'"

Dr. Margolin continued: "'Heather has made it clear that she feels under great pressure from her mother to say something about her father sexually abusing her.'" "'. . . Idelle [C.], contrary to what one would think a mother would desire, clearly is unhappy to be told that her daughter has not been sexually abused.'" "'Unfortunately, I have grave concerns about a number of aspects of Idelle [C.'s] functioning. From the very beginning she has attempted to interfere with Heather's relationship with her father . . . .'" "'. . . Idelle has made the statement that [Ovando] has been trying to take her daughter away from her, but the reality is the converse. [¶] Therefore, . . . I feel that it would be in Heather's best interest to get out from under the overwhelming burden of her mother's needs and that this can only be accomplished if Heather's father has primary physical custody at least temporarily.'" The TSOD also quoted from an April 18, 1994 follow-up report of Dr. Margolin. Dr. Margolin concluded that Idelle's "'behavior with regard to her daughter has not changed from the time of my original evaluation except that she has not been making allegations of sexual abuse.'"

The TSOD next referred to the June 1, 1995 report of court-appointed psychiatrist Dr. Ronald Markman. Dr. Markman conducted his evaluation when Heather was living at the residential treatment facility at which she had been placed while the dependency petition was being litigated. He described Idelle as "'an aggressive, persistent individual, who has difficulty seeing any position but her own.'" The TSOD also recounted that during the dependency hearing reference was made to a portion of the report in which Dr.

Markman stated that it was imperative that Idelle "'discontinue her obsessive focus on the issue of her daughter's molestation.'" Dr. Markman testified that if Idelle were unable to "'overcome that obsessive focus,'" it would have a detrimental effect on Heather.

Part I of the TSOD next recounted information proffered by Heather's therapist, Lyn Greenberg, in a written report of June 4, 1996. (The substance of the report was reiterated in large part in a written declaration of June 2, 2000, that was received in evidence at trial.) Dr. Greenberg referred to Heather's placement with Idelle following resolution of the dependency matter in mid-1995 as follows: "'The recent changes in Heather's behavior represent one more step in the expansion of her mother's control over her and the deterioration of Heather's independence that has been occurring since she left [the residential treatment facility]. Early on, the impact was limited to her verbal behavior and she was still able to make some independent statements when transported by her father. Since her placement with her mother, the deterioration has expanded to include ever increasing amounts of Heather's verbal and nonverbal behavior. This leaves Heather with fewer and fewer avenues through which she can experience the world independently. She does not have the coping skills to ward off [Idelle's] covert and overt messages which are directly counterproductive to treatment.'"

The final report referred to in part I of the TSOD was that of Dr. Portanova dated May 18, 1998. The TSOD contains almost 30 pages of quotations from the report. Included are the following: "'Heather is a . . . young lady whose anxiety and anger is palpable and disabling. She often displayed pressured or tangential speech and at time had difficulty [focusing]. She made several spontaneous statements as if there was some agenda for her to follow. Her anger at [Ovando] and her connection (enmeshment) with Idelle was noted in her comments and her drawings. Her belief system includes that there is no one she can feel safe with other than Idelle (and possibly a few chosen people). Her desire for escape was noted . . . . Her belief system includes that people in this process don't care, or listen to her, or protect her (including her attorneys, monitors, myself, and Judge Sandoz) except primarily Idelle. Separate and apart from the allegations of sexual

abuse, all of these symptomatologies were alarming to this evaluator and raised serious concerns. It was clear that this child lives in a world of constant fear, chronic anxiety, palpable anger and extreme dependence upon Idelle. Her willingness to participate in different aspects of this evaluation (psychological testing, home visit with [Ovando]), was ultimately flexible although initially resistant. She became resistant again when she experienced Idelle's reactions (body language, facial expressions). Heather looked at Idelle when responding to questions. She was sensitized to Idelle's feelings. Heather's observations of Idelle altered her behavior, attitude and responses.'"

As recounted in the TSOD, Dr. Portanova further stated: "'Idelle identifies herself as Heather's "advocate" and "protector." Unfortunately, Idelle has applied herself to this role by micromanaging, manipulating, and by being intrusive . . . . As a result, Idelle's behavior has now become as relevant to what is in Heather's best interest as the allegations of sexual abuse. . . . [¶] Since the allegations of sexual abuse, Idelle herself has maintained Heather in the "victim" role. Although she blames [Ovando], the "legal system," the monitors, several judges and deputies, Idelle herself has perpetuated this "victim" role for Heather. . . . Idelle underestimates the impact of her attempt to "document" Heather's distress on Heather's mental health, emotional development, or Heather's view of herself as being victimized by [Ovando]. . . . [¶] Overidentification or enmeshment issues were noted throughout this evaluation. . . . Idelle's inability to separate her own issues from Heather's issues, and Heather's inability to identify her own issues separate from Idelle's issues, were concerning.'"

Finally, according to Dr. Portanova: "'. . . [T]his case encompasses far more than just the issue of sexual abuse. It is much more complicated than just listening to Heather's "wishes." Idelle's inability to see any value that [Ovando] might have to Heather, her inability to acknowledge Heather's ambivalence and confusion about [Ovando], her insistence that a vast number of professional caretakers in this case are incapable of "protecting" Heather . . . and her enmeshment with Heather, have caused Heather excessive emotional detriment in its own right, not explainable or excusable by assuming the role of "protector" or "advocate" for an alleged sexual abuse victim. [¶]

. . . Heather's best interest is not being served by Idelle's parenting approach. . . . [¶] . . . Heather's ability to heal is reliant upon her ability to be removed from Idelle's primary care. . . .'"

Part I of the TSOD concluded: "There was, of course, evidence contrary to some of the above-quoted statements. However, this Court finds that the mental health professionals' conclusions expressed above were, in general, accurate."

Part II of the TSOD discussed "1998 to the Present." Noting that Dr. Portanova's report had been submitted over two years earlier, the court asked what had happened since then. The court found that Idelle "has not ceased her harmful conduct. Because of the limitations imposed on her contact with Heather, [Idelle] has had to search for new methods of continuing that conduct. She has found them and has aggressively pursued them. They have interfered dramatically with Heather's ability to heal. [¶] . . . Heather is doing materially better, at least emotionally, in her father's custody except when her mother engages in alienating or other inappropriate conduct." (Underscoring omitted.) The court further found that Idelle had "repeated[ly] given wilfully false testimony on material issues." (Underscoring omitted.)

Examples in support of these findings were given. With respect to Idelle's lack of credibility, the TSOD cited Idelle's false testimony that she never interfered with visitation by Ovando,[10] that she was unable to identify one of her declarations, that she believed that Heather was telling her current therapist of allegations of current sexual abuse, and that she never tried to tape record any sessions between Heather and the therapist. With respect to Idelle's conduct, the court found that Idelle had "repeatedly denigrated [Ovando] and Ms. Gould-Saltman [(Heather's attorney)] in telephone conversations with Heather . . . ." In March 1998, Idelle sent "an absolutely outrageous letter to Heather's then therapist . . . ." She also participated in the preparation of an

---

[10] The record is replete with evidence of the extreme difficulties encountered when Heather was to be picked up by Ovando or Idelle for visitation.

article that appeared in a weekly newspaper in July 1999 which was "an anti-[Ovando] story replete with inaccuracies and half-truths in a periodical displayed extensively on newsracks in Los Angeles County – and then distributed it in such a way as to virtually assure that it would come to the attention of Heather's friends (or at least their parents) and very likely to Heather . . . ." Idelle appeared on television and radio programs in December 1999 and repeated her sexual abuse allegations against Ovando.

With respect to Heather's current emotional state, the court found persuasive the testimony and declarations of Heather's psychotherapists regarding Heather's progress. In particular, the TSOD quotes from the declaration of Heather's individual therapist, Dr. Marlene Valter, who had been seeing Heather weekly since February 1999. The therapist noted that there had been various investigations by DCFS throughout this time, and Heather reported that "'she experienced an increase in pressure during those times. [¶] . . . Heather's strongest reaction to an investigation occurred in approximately July of 1999 when she was interviewed by a social worker at approximately 2:00 a.m. This investigation coincided with the release of an article about her case in a local weekly newspaper. It was reported to me that after this middle of the night interview, Heather was very frightened when people . . . came to the door.'"

Dr. Valter continued that, in therapy sessions toward the end of 1999, Heather "'made statements indicating that she believed she was solely responsible for her mother's happiness and well-being. She explained that her mother did not have anyone else . . . . Heather described her mother as an "angry" of [sic] "mad" all the time, which hindered her ability to have relationships with others and, as a result, Heather considered herself her mother's only friend and close relationship. Heather's solution to the responsibility she felt toward her mother was to live with her mother.'" "'In recent month[s], Heather's contact with her mother has been by telephone only. . . . Heather described the present visitation situation as progress in that she stated, "The way it is now at least she [her mother] is not mad on the phone anymore." At this time, however, Heather believes that if she had visits with her mother, that her mother would be "mad" on the visits.'"

In the TSOD, the court concluded with respect to the above: "This progress resembles the sort of break-through Dr. Greenberg believed Heather needed and could not experience so long as she was under her mother's domination. It is interfered with dramatically when [Idelle] engages in her inappropriate conduct described above."

Part III of the TSOD was captioned "The Future – the Court's Order." In it, the court concluded (among other things) that Idelle and Ovando both love Heather and that Heather loves both Idelle and Ovando. However, Idelle "is a mentally disordered person whose chosen path of conduct has severely harmed Heather emotionally and who, if permitted unrestricted contact with Heather, will continue severely to harm her emotionally." "The evidence before the Court does not persuade the Court that Heather is in any way at risk remaining in the sole custody of [Ovando]. According to the evidence before this Court, since obtaining sole physical custody of Heather (and, for that matter, almost without exception since at least 1994) [Ovando] has conducted himself in a way that has consistently been in Heather's best interests. To the benefit of Heather, [Ovando] has, among other things, exercised a[n] enormous (and praiseworthy) degree of self-restraint in dealing with [Idelle's] flagrant disregard of Court orders designed to protect Heather (and [Ovando]) from [Idelle's] abuse."

The TSOD continued: "During the trial, [Idelle] testified that she still has a 'very, very, very clear and absolute' belief that [Ovando] sexually abused Heather. [Idelle] will not cease her alienating and other inappropriate conduct unless she is successful in substantially excluding [Ovando] from Heather's life. She made that quite plain by her astonishing answer to the Court's question on January 13, 2000; in substance, she indicated that if given the choice between (a) being unable to disseminate her contention that Heather was sexually abused by her father in a way that could get back to Heather but having substantial unmonitored time with Heather and (b) being able to disseminate her said contention in ways that could get back to Heather <u>but never seeing her daughter again</u>, she would choose the latter! Her remarks were eloquent (albeit factually inaccurate in certain respects) – but very sad, in that they miss the point. They demonstrate that at this point [Idelle] <u>will not stop</u> attempting to ruin Heather's

relationship with her father no matter how harmful her conduct is to Heather." (Fns. omitted, original underscoring.)

The TSOD further noted that Idelle had repeatedly cited Family Code section 3027.5.[11] The court found that the prohibitions of section 3027.5 were not applicable to the case for three reasons: First, section 3027.5, subdivision (a), limits the court's power when that power would be exercised "'solely'" because of the reasons described subdivision (a)(1), (2), or (3), and "[a]s is no doubt evident from the contents of this Statement of Tentative Decision, in this case the Court is exercising its power for many reasons other than those described in said subparagraphs (1), (2) and (3)." (Original underscoring.) Second, under subdivision (a)(2), Idelle's "actions in recent years are not based on a 'reasonable belief' that Heather has been the victim of sexual abuse." And third, the court found that under subdivision (b) of the statute, subsequent to June 2, 1998, Idelle made repeated reports of sexual abuse knowing that the reports were false when she made them, the provisions of the custody and visitation determination being made by the court were "necessary in order to protect the health, safety and welfare of

---

[11] Family Code section 3027.5 provides:

"(a) No parent shall be placed on supervised visitation, or be denied custody of or visitation with his or her child, and no custody or visitation rights shall be limited, solely because the parent (1) lawfully reported suspected sexual abuse of the child, (2) otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or (3) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.

"(b) The court may order supervised visitation or limit a parent's custody or visitation if the court finds substantial evidence that the parent, with the intent to interfere with the other parent's lawful contact with the child, made a report of child sexual abuse, during a child custody proceeding or at any other time, that he or she knew was false at the time it was made. Any limitation of custody or visitation, including an order for supervised visitation, pursuant to this subdivision, or any statute regarding the making of a false child abuse report, shall be imposed only after the court has determined that the limitation is necessary to protect the health, safety, and welfare of the child, and the court has considered the state's policy of assuring that children have frequent and continuing contact with both parents as declared in subdivision (b) of Section 3020."

Heather, and this Court has considered California's policy of assuring that children have frequent and continuing contact with both parents as declared in subdivision (b) of Family Code Section 3020."

Finally, the court tentatively ordered that Ovando have sole legal and physical custody of Heather[12] and that Idelle's only contact with Heather would be during the course of her conjoint therapy with Heather, subject to various terms and conditions.

On October 18, 2000, the supervising judge of the family law departments (Hon. Aviva Bobb) issued a "clarification of the [court's] prior assignment order." The clarification provided that the October 19, 1998 assignment to Judge Gold of trial of custody and visitation "encompasses financial issues relating to said custody and visitation dispute. Such financial issues include, but are not limited to, claims by minor's counsel for fees and/or costs and/or sanctions; the issue of who should bear such fees and/or costs of minor's counsel . . . ; and requests of [Idelle] and/or [Ovando] for fees and/or costs and/or sanctions in connection with said custody and visitation dispute."

**E.**

A "bifurcated judgment re custody and visitation of minor child reserving jurisdiction on other issues" was signed and filed on October 27, 2000. A "Re-Issued Notice of Entry of Judgment" was filed on December 7, 2000. The judgment reiterates that Ovando is to have sole legal and physical custody of Heather and that Idelle's only contact with Heather is to be during the course of her conjoint therapy with Heather. The therapist, who is specified by name, is to determine the dates and location of the therapy sessions. "Heather's conjoint therapy sessions with [Idelle], during the period commencing forthwith and ending September 12, 2001, shall occur no more frequently than once in any one calendar week. [¶] . . . Said therapist shall have the right and obligation to temporarily (until further order of court) suspend or terminate any conjoint

---

[12] The TSOD erroneously indicated that "[p]etitioner" (i.e., Idelle) was to have custody. That error was corrected by order of September 14, 2000.

therapy session(s) with [Idelle] and Heather immediately upon the occurrence of any behavior by [Idelle] that, in the therapist's opinion, may have a tendency to alienate Heather from [Ovando] or otherwise harm Heather. [¶] . . . [Idelle] may file an Order to Show Cause to resume conjoint therapy contacts if she disagrees with the therapist's suspension or termination thereof. The therapist's decision to suspend or terminate conjoint therapy contacts governs only until the court reviews the therapist's decision. The court shall have sole and exclusive jurisdiction regarding any permanent termination or resumption of conjoint therapy contacts. [¶] . . . [¶] . . . Except to the extent permitted [for conjoint therapy sessions], [Idelle] (a) shall remain at least 100 yards away from Heather and from [Ovando's] residence and from Heather's schools and (b) shall not attempt to telephone or otherwise contact or speak to Heather, directly or indirectly, either individually or by or through an agent." (Original underscoring.)

On October 27, 2000, a hearing was held on various matters, including requests for sanctions and payment of fees to Gould-Saltman. Idelle, who was appearing in propria persona, asked for a continuance on the ground that the court had characterized her as a mentally disordered person.[13] The request was denied, the court finding that Idelle was not incompetent to represent herself. Idelle next argued the court did not have jurisdiction to hear the fees issue. The court disagreed and proceeded to hear the matter.

With respect to fees, reference was made to financial records of Idelle's business enterprises. Those records and other financial documents, including income and expense declarations filed by the parties, were received in evidence. Ovando testified that Idelle's earnings from her business were more than $100,000 in 1992 and were approximately $65,000 in 1993. Between July 1999 and March 2000, Idelle earned almost $28,000. The court found that Idelle had the ability to earn $65,000 per year, commenting that her

---

[13] Although represented by counsel (who were changed several times) throughout the bulk of the proceedings, Idelle also represented herself on various occasions throughout the course of this litigation.

declarations state that she has been spending all of her time on this case and not working, and "if she could earn $27,874.31 in eight months from hardly working at all, one can well imagine that she can earn the $65,000 by working full-time or substantially full-time."

Following argument, Ovando was ordered to reimburse the County of Los Angeles $80,000 for payment of Gould-Saltman's fees, and to himself pay Gould-Saltman $58,297.08 for fees and costs in connection with the custody and visitation trial. The court ordered Idelle to pay Ovando $258,297.08 in attorney fees and costs sanctions pursuant to Family Code section 271, finding that Idelle had "frustrated the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. The court [further found] that these sanctions will not impose an unreasonable financial burden on [Idelle]."

On December 18, 2000, Idelle filed three notices of appeal. One notice recites that appeal is taken from the October 18, 2000 "clarification of the court's prior assignment order" regarding financial issues to be heard by Judge Gold. Another is taken from the October 27, 2000 order on costs and sanctions. A third appeal is from the judgment filed on October 27 and "re-issued" on December 7, 2000.

## DISCUSSION

### A.

"'The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test.' [Citation.]" (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.) "[T]he overarching concern is the best interest of the child. The court and the family have 'the widest discretion to choose a parenting plan that is in the best interest of the child.' [Citation.] When determining the best interest of the child, relevant factors include the health, safety and welfare of the child, any history of abuse by one parent against the child or the other parent, and the nature and amount of contact with the parents. [Citation.]" (*Ibid.*, fn. omitted.)

"'"The trial judge, having heard the evidence, observed the witnesses, their demeanor, attitude, candor or lack of candor, is best qualified to pass upon and determine

the factual issues presented by their testimony. This is especially true where the custody of minor children is involved. An appellate tribunal is not authorized to retry the issue of custody, nor to substitute its judgment for that of the trier of facts. Only upon a clear and convincing showing of abuse of discretion will the order of the trial court in such matters be disturbed on appeal. Where minds may reasonably differ, it is the trial judge's discretion and not that of the appellate court which must control." [Citation.]' [Citation.]" (*Catherine D. v. Dennis B.* (1990) 220 Cal.App.3d 922, 931.)

"'It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.' [Citations.] If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived. [Citation.]" (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) "Moreover, parties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat [Idelle's contentions] as waived. [Citation.]" (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448; accord, *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 391.)

**B.**

Idelle contends that "the seven year delay in rendering a decision itself violates due process." Focusing on the period of time that the matter was pending before Judge Gold, CA NOW contends that trial court delay violated Family Code section 3023.

We recognize that public policy requires timely disposition of litigation. (Gov. Code, § 68603, subd. (a).) The trial judge has the responsibility to eliminate delay, assume and maintain control over the pace of litigation, and to actively manage the processing of litigation from commencement to final disposition. (*Id*., § 68607.) And trials in which child custody is the sole contested issue must be given precedence over civil proceedings to which special precedence has not otherwise been given. (Fam. Code, § 3023, subd. (a).)

But Idelle has not presented this court with a record that demonstrates how the court failed to comply with any of its responsibilities. The record reflects that much of the delay was occasioned by factors such as the extensive evaluations conducted by Drs. Margolin and Portanova; the suspension of family law proceedings while the dependency petitions were pending; proceedings on allegations of bias against Judge Feffer and Judge Gold; Idelle's failure to comply with local court rules with respect to trial; the schedule of one of Idelle's attorneys, who was admitted pro hace vice and traveled from New Orleans for the trial proceedings; and the numerous OSC's filed during trial, which were heard in lieu of trial testimony. CA NOW asserts that Judge Gold would "[h]ear a day or a few days of testimony, and then, instead of reserving a block of future time in the courtroom, wait until the end of the testimony and have everyone get out their calendars and see when court and counsel could again meet for the trial." The appellate record simply does not support this assertion.

Moreover, Idelle did not object at any time to the pace of the proceedings. CA NOW recognizes this procedural bar and argues: "Even if mother did not complain about the delay — society has an interest, as evidenced by [Family Code] section 3023, in getting children's custody matters promptly resolved." On its face, seven years seems an unreasonable amount of time to resolve the contested issue of Heather's custody. But in order for the interest of the parties and of society in the prompt resolution of custody matters to be vindicated through the appellate process, the reviewing court must be presented with a record that enables it to assess the particulars of the delay. Such a record has not been presented in this case. Accordingly, Idelle's and CA NOW's statutory and constitutional contentions must be rejected.

**C.**

Idelle and CA NOW contend that Judge Koppel's June 2, 1998 pendente lite order removing Heather from Idelle's custody and placing her with Ovando was improper in multiple respects and prejudiced the judgment ultimately rendered by Judge Gold. The contention is unavailing.

The parties agree that this order was extraordinary. Its extraordinary nature had its genesis in Dr. Portanova's direct request of the trial court that all copies of her evaluation be released to the court rather than submitted directly to the parties and their counsel. Judge Koppel, in obvious agreement with Dr. Portanova's assessment that this would be the best course to pursue, immediately called a hearing. At that hearing, the parties were permitted to read the report, following which Judge Koppel entered the order over Idelle's objection.

Typically, a child custody evaluator's report is served on the parties at least 10 days before a custody hearing (Fam. Code, § 3111, subd. (a)) and "shall not be made available other than as provided in subdivision (a)" (*id*., § 3111, subd. (b)). But an order modifying custody may be made on an ex parte basis where there has been a "showing of immediate harm to the child or immediate risk that the child will be removed from the State of California." (*Id*., § 3064.) Given the flight risk identified in Dr. Portanova's report, it cannot be said that Judge Koppel's ex parte order violated this provision of the Family Code.

Idelle and CA NOW further complain that, because of the lack of notice that a hearing would be held, Idelle did not have the opportunity to examine Dr. Portanova about her findings. However, the record establishes that the next hearing in the case was held on July 6, 1998, just over a month after the ex parte order was entered. At that hearing, Idelle did not call Dr. Portanova to testify about her report, nor did she challenge the contents of that report in any other manner. Accordingly, we reject the assertion that Idelle's due process rights were violated. (Cf. *In re Corey A.* (1991) 227 Cal.App.3d 339, 347.)

Finally, even assuming a procedural due process failing in the issuance of Judge Koppel's order, we find it to be nonprejudicial. Judicial Watch asserts that the order "substantially affected all further court proceedings." CA NOW argues that, following a pendente lite order modifying custody such as the one here, "[l]ater, at the trial the court usually will not address the propriety of the initial taking of the child but only the present custody/visitation issues—and the status quo prevails. Even if the trial court determines

that the initial taking was improper, it finds that the interest of the child is in stability, and it cannot ignore the status quo."

The final judgment rendered in this case was not a mere extension of the pendente lite determination. In rendering that judgment, the trial court went though the entire history of the case in great detail, including a review of the circumstances affecting Heather's best interests that had occurred since the pendente lite order. As is evident from the TSOD, Heather remained in Ovando's custody not because of some perceived benefit of the status quo, but because Idelle's conduct, including in the interim period, was determined to be detrimental to Heather. Thus, the assertions of prejudice must be rejected.

**D.**

Idelle and CA NOW contend that the judgment must be reversed because a mistrial was not declared when the matter was transferred from Judge Sandoz to Judge Gold. We disagree.

"The law has long been settled that in a civil action '[a] party litigant is entitled to a decision upon the facts of his case from the judge who hears the evidence . . . .' . . . It is considered a denial of due process for a new judge to render a final judgment without having heard all of the evidence. [Citations.]" (*European Beverage, Inc. v. Superior Court* (1996) 43 Cal.App.4th 1211, 1214–1215.)

Here, the record is unclear as to whether a mistrial was formally declared before the matter was transferred to Judge Gold on the limited issues of child custody and visitation. Such a declaration, or its lack, was of no consequence. The evidence presented to Judge Sandoz, including Heather's accusation that Ovando had molested her, was also heard by Judge Gold. Judge Gold further gave Idelle permission to call Ovando as a witness under Evidence Code section 776, as she had done in the two days of hearing before Judge Sandoz. Thus, Judge Gold heard all of the evidence that had been presented to Judge Sandoz (and much, much more) and made his decision based on that evidence. Any lack of a formal declaration of mistrial does not provide a basis for relief to Idelle.

**E.**

Idelle and amici claim error with respect to Judge Gold's ruling on res judicata. The contention must be rejected.

"Res judicata gives conclusive effect to a final judgment on the merits in subsequent litigation of the same controversy. Collateral estoppel bars relitigation of an issue decided in a previous proceeding in a different cause of action if '(1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; and (2) the previous proceeding resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the prior proceeding.' [Citations.]" (*People v. Davis* (1995) 10 Cal.4th 463, 514–515, fn. 10.)

We have already noted that the trial court's ruling on this issue is not set forth in the appellate record. Assuming that res judicata may be applied to an ongoing, long-term child custody matter and further assuming that the trial court's ruling on the issue was adverse to Idelle, she has failed to present any cogent reason why she should have been permitted to relitigate the allegations of sexual abuse that were dismissed in April 1995.

The focus of the res judicata discussion in the trial court was the question of privity. "Privity is generally defined as a relationship in which a person is so identified in interest with another that he is said to represent the same legal right; its discernment resting upon a case-by-case examination. [Citation.]" (*Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567, 583.) The question of privity requires a close examination of circumstances. (See *Victa v. Merle Norman Cosmetics, Inc.* (1993) 19 Cal.App.4th 454, 464.) To the extent such review is possible on this record, we can find no basis upon which to disagree with the trial court's apparent conclusion, reached only after extensive questioning of the trial attorney who represented Idelle in the dependency case, that Idelle and DCFS had the requisite identity of interest for application of the doctrine of res judicata.

The record also belies Idelle's and CA NOW's assertion that Judge Gold was unaware of the Welfare and Institutions Code section 342 dependency petition that was

dismissed in July 1996 when the parties reached a settlement and that he disregarded abuse allegations made by Heather after the original DCFS petition had been dismissed for lack of evidence in April 1995. During the trial testimony of Dr. Gibbs, who administered psychological tests to Heather in mid-1997 in conjunction with Dr. Portanova's custody evaluation, counsel for Idelle asked about allegations of Ovando's abuse that Heather had made during that testing. Counsel argued that the time frame of the abuse was relevant because Heather may have been referring to abuse that took place after the April 1995 dismissal. Although Dr. Gibbs was unable to specify the time frame about which Heather was speaking, he was thereafter permitted to testify in detail about Heather's allegations of sexual abuse against Ovando, thereby demonstrating that the trial court did not consider the abuse allegedly committed after April 1995 to be subject to issue preclusion.

**F.**

Idelle and CA NOW assert that the evidentiary sanctions unfairly prejudiced Idelle's ability to present her case. As originally issued by Judge Sandoz in December 1996, the sanctions precluded Idelle from presenting witnesses other than herself, Heather, and Ovando in the custody and visitation trial. In August 1998, the order was relaxed with respect to Drs. Portanova and Gibbs. In January 1999, Idelle was further permitted to present testimony from the principal of Heather's school and from Dr. Ralston. The next month, Judge Sandoz ruled that Idelle could call Ovando's wife and one of the visitation monitors as witnesses at trial. Finally, in May 1999, Idelle's motion for relief from the sanctions was granted with respect to all documentary evidence. Idelle has failed to demonstrate how the frequently modified evidence preclusion sanction adversely affected the presentation of her case. Accordingly, the contention must be rejected.

**G.**

Idelle and CA NOW perceive the overriding issue in this case to be parental alienation syndrome (PAS). Idelle contends that she was "deprived of due process, equal protection and her statutory rights by the court's application of the unscientific,

unaccepted and sexist 'parental alienation syndrome.'" CA NOW similarly contends that "Parental Alienation Syndrome — or 'alienation' as it was referred to by the trial judge herein — is so illogical and nonsensical that its application denied due process of law to appellant Idelle . . . ." These arguments are based on the premise that, rather than relying on the evidence presented, the trial court made unfounded assumptions in reliance on the existence of an invalid "syndrome." We conclude that this premise is not borne out by the record.

"Dr. Richard Gardner developed the PAS theory through his personal observations of his own patients. Dr. Gardner describes PAS as a disturbance in which children are not merely systematically and consciously 'brainwashed' but are also subconsciously and unconsciously 'programmed' by one parent against the other. . . . Dr. Gardner explains that 'PAS is a disorder of children, arising almost exclusively in child-custody disputes, in which one parent (usually the mother) programs the child to hate the other parent (usually the father)." (Comment, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability* (1994) 27 Loyola L.A. L.Rev. 1367, 1369–1370, fns. omitted.)

"PAS has not been subjected to peer review or accepted by experts in the fields of psychology or child advocacy, nor is editorial discretion exercised regarding the theory because Gardner's own company publishes his manuscripts. [¶] Gardner's theories are also discounted by professionals in the mental health field . . . . [¶] Despite insufficient verification of the authenticity and accuracy of PAS, some courts have used Gardner's PAS theory to quickly diagnose PAS, abruptly remove a child from a custodial parent who alleges abuse, and place the child in the custody of the allegedly abusing parent simply because the custodial parent has alleged that the non-custodial parent was abusing the child. Gardner's PAS theory justifies such a drastic measure because, in his opinion, a custodial parent's claim of abuse of the child by the non-custodial parent is almost always a fabrication intended to alienate the child from the non-custodial parent as a tactic in a custody battle." (Comment, *Parental Alienation is Open Heart Surgery: It Needs More Than a Band-aid to Fix It* (1997) 34 Cal. Western L.Rev. 567, 577, fns. omitted.)

Nowhere in this record is there an indication that PAS was actually applied to the facts of this case. The trial court's references to the existence of Idelle's efforts to alienate Heather from Ovando were based on specific evidence with which the court was presented, not on the existence or application of a so-called *syndrome*. Indeed, the trial court went to great lengths to disavow reliance on PAS, stating that it had not based its rulings on PAS and did not even know whether it existed.[14]

The trial court's findings under Family Code section 3027.5 further demonstrate that PAS played no role in its decision-making process. Section 3027.5 was enacted as part of Senate Bill No. 792. As stated in the analysis of Senate Bill No. 792: "This bill curtails judicial discretion to limit a parent's custody or visitation when an allegation of sexual abuse is made against the other parent. According to the sponsors, this bill addresses a specific problem that arose in the family court system in the early '90s. A theory called 'Parental Alienation Syndrome' asserts that almost all allegations of child sexual abuse are false, and the purported 'remedy' is to prohibit all but the most restricted contact between the mother and the child. Although discredited by mainstream academia, it continues to influence certain courts. This bill addresses this problem by prohibiting any limitation on a parent's custody or visitation because the parent lawfully reported child sexual abuse. This bill is careful to protect only lawful conduct, which

---

[14] At a November 21, 2000 hearing on an OSC brought by Idelle at which she presented documents regarding parental alienation syndrome, the court stated: ". . . I thought by now it would be abundantly clear, but in case it isn't abundantly clear, I want to state that at no time during the course of this trial, the custody trial or subsequent thereto, have I based my rulings on any parental alienation syndrome. [¶] I don't know whether such a syndrome exists. I can't know the extent to which, if it does exist, it would have a persuasive impact, but I have not based my rulings in this case on any parental alienation syndrome. [¶] [Idelle], for reasons of her own, keeps asserting that somehow the parental alienation syndrome formed a basis for this court's decision. It did not. Parental alienation certainly did — was involved, but not any parental alienation syndrome. I firmly believe that there can be parental alienation. I have no idea of whether this is a parental alienation syndrome."

would not include a knowingly false report." (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 792 (1999–2000 Reg. Sess.) as amended Sept. 7, 1999, p. 4.)

Heather was not, as Idelle and CA NOW contend, placed in Ovando's custody simply because Idelle alleged child abuse. The decision to place Heather primarily in Ovando's custody was made, first by Judge Koppel and then by Judge Gold, after extensive evaluations had been conducted by qualified professionals and Idelle's allegations of abuse had been rejected by the court. Moreover, in rendering judgment on custody and visitation, Judge Gold found under Family Code section 3027.5 that Idelle did not have a reasonable belief in recent years that Ovando had molested Heather and that "subsequent to June 2, 1998, [Idelle] made repeated reports of sexual abuse of Heather . . . [knowing] said reports were false when she made them." Idelle does not directly challenge the sufficiency of the evidence on which these findings were based, and in any event we find them to be more than adequately supported by the record. Thus, the problem that section 3027.5 was intended to prevent — limiting a parent's custody or visitation because the parent had made good-faith reports of child sexual abuse — did not arise in this case.

**H.**

Referring to her numerous contacts with the media and citing the interchange referred to in part III of the TSOD, quoted above, between herself and Judge Gold regarding how refusal to cease such contacts would adversely influence the court's decision on visitation, Idelle claims that she was punished for exercising her rights to free speech under the First Amendment to the United States Constitution. Not so. The record demonstrates that the sole focus of Judge Gold's concern over Idelle's contacts with the media was their harmful effect on Heather.

Idelle is correct in noting that Heather's true name was not used and that no proof was offered that Heather was specifically aware of the media coverage. But this absence of evidence does not undermine validity of Judge Gold's concerns. For example, although a newspaper article uses the pseudonym "Lauren" instead of Heather, the article

also uses Idelle's and Ovando's full names. (*A Little Girl's Hell*, New Times Los Angeles (July 22, 1999) <http://www.newtimesla.com/issues/1999-07-22/feature.html> [as of July 25, 2002] (New Times article).) It strains credulity to think that the contents of such a sensational and disturbing article, appearing in a free weekly newspaper that is distributed throughout the Los Angeles area, would not somehow ultimately be revealed to Heather. Idelle's First Amendment rights were not improperly restricted in this case.[15]

**I.**

Idelle contends that the judgment effected a termination of her parental rights despite the absence of clear and convincing evidence that such termination was justified. The contention is based on the false assumption that parental rights were terminated. Idelle's parental rights were not terminated in either in the dependency case or the bifurcated judgment on custody and visitation from which the instant appeal has been taken. The contention must be rejected.

**J.**

Citing *In re Marriage of Matthews* (1980) 101 Cal.App.3d 811, 815, 816, Idelle contends that the judgment improperly delegated to Heather's therapist the right to modify Idelle's visitation. She further contends that the judgment improperly terminated Idelle's contact with Heather after the one-year period of counseling that was specified in the judgment had ended.[16] The order was not improper.

---

[15] Indeed, although CA NOW accuses Judge Gold of seeking to punish Idelle for the way he was portrayed in the media, the New Times article states: "[Ovando's counsel] urged the judge to prohibit the media from writing about the case, but Gold refused, telling him such action would violate the First Amendment to the Constitution." (New Times article, *supra*, <http://www.newtimesla.com/issues/1999-07-22/feature.html> [as of July 25, 2002].)

[16] Heather's and Idelle's conjoint therapy sessions were ordered to run through September 12, 2001, which was one year from the filing of Judge Gold's TSOD.

In *Matthews*, the court discussed *Washburn v. Washburn* (1942) 49 Cal.App.2d 581, in which the trial court transferred the custody of minor children based solely on the report of a domestic relations investigator. (*In re Marriage of Matthews, supra,* 101 Cal.App.3d at p. 816.) *Matthews* and *Washburn* are inapposite to the instant case. The provision for conjoint therapy between Idelle and Heather carefully delineates the different types of authority held by the therapist and the trial court, enabling the therapist to only "temporarily" suspend sessions and specifically reserving to the trial court the exclusive jurisdiction to make any further permanent order.

Nor did the trial court improperly terminate Idelle's contact with Heather. Family Code section 3190, subdivision (a), permits an order of counseling for a maximum period of one year, which was the amount of time ordered here. At the end of the one-year period, a request may be made for the counseling to continue. (*Id*., § 3190, subd. (e).) Thus, even if the only visitation takes place during counseling sessions, the judgment does not call for Idelle's contact with Heather to be terminated; rather, it is incumbent on Idelle to seek an extension of the counseling or make any other appropriate request for modification of the judgment.

**K.**

Idelle contends that the order of October 2000, which clarified that the October 1998 assignment of the matter to Judge Gold on the limited issues of custody and visitation also encompassed financial issues relating to custody and visitation, constituted an unauthorized attempt to rewrite history. We fail to see how. It is only logical that the bench officer who has been assigned to hear certain bifurcated issues in a case be the one to determine the financial issues relating to those issues. Idelle does not claim that Judge Gold did any more than that. Her contention must be rejected.

**L.**

Despite claims of Idelle and amici to the contrary, nothing in law or in the appellate record supports the contentions that the order consolidating the dependency and family law cases was improper, that a conflict of interest existed between Gould-Saltman and Heather or that Gould-Saltman's representation of Heather was in any other way

improper, that Idelle was improperly restricted from presenting the testimony of Dr. Ralston, that nunc pro tunc orders were improperly used, that the financial orders issued by Judge Gold "can only be viewed as an attempt to punish [and] financially cripple" Idelle, that denial of Idelle's requests for free transcripts violated her constitutional rights, or that the alleged loss of superior court records by the clerk of that court deprived Idelle of due process.

**DISPOSITION**

The judgment and the orders under review are affirmed. Costs are awarded to respondent.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

ORTEGA, Acting P. J.

VOGEL (MIRIAM A.), J.